

VZCZCXR07949
OO RUEHDE
DE RUEHC #1868/01 2461428
ZNY SSSSS ZZH
O 031410Z SEP 09
FM SECSTATE WASHDC
TO RUEHAD/AMEMBASSY ABU DHABI IMMEDIATE 4980
INFO RUEHDE/AMCONSUL DUBAI IMMEDIATE 8954

S E C R E T SECTION 01 OF 04 STATE 091868

SIPDIS

E.O. 12958: DECL: 09/03/2019
TAGS: PARM PREL KNNP MNUC ZP AE
SUBJECT: DISPOSITION OF INTERDICTED CARGOES

REF: A. A) STATE 021428
 ¶B. B) ABU DHABI 716
 ¶C. C) TD-314/054479-09

Classified By: ISN Robert Mikulak for reasons 1.4 b, c, and d

ACTION REQUEST

¶1. (U) Post is requested to deliver the points (para 5) and the nonpaper (para 6) to appropriate host country government officials.

End action request.

SUMMARY AND BACKGROUND

¶2. (S) The UAE has, since at least 2006, raised with the U.S. the issue of how to dispose of proliferation-related cargoes that it interdicts. This is a critical issue that, if left unresolved, could potentially erode UAE willingness to conduct interdictions in the future. The U.S. has offered the UAE consultations on this issue and has also provided options for the UAE to consider (ref A).

¶3. (S//NF) At the June Counterproliferation Task Force working group on export controls, we reiterated our willingness to help the UAE with this issue. We suggested that the UAE add language that would address this problem to the export control implementing regulations it is currently drafting. We indicated that Washington would provide language from U.S. laws that it could draw from. We also reiterated our interest in discussing this issue in greater detail at the experts' level. The UAE indicated that it wished to wait until its newly formed Executive Office was established, but said that such a meeting might be possible in the September - October timeframe (ref b). As of August 2009, the UAE reportedly was drafting a new cabinet resolution, scheduled to be issued in approximately September 2009, which would purportedly address disposition of interdicted cargoes (ref C).

End summary and background.

OBJECTIVES

¶4. (S) Post should achieve the following objectives:

-- Express appreciation for the UAE's continued efforts to interdict proliferation-related cargoes.

-- Inquire about the status of the UAE's efforts to address the issue of whether it has adequate legal authority to dispose of legally interdicted cargoes that have been transferred in violation of Security Council resolutions or are otherwise illicit.

-- Encourage it to develop legal authorities, or if those authorities already exist, to make them explicit by including them in the export control implementing regulations or a government resolution.

-- Offer the nonpaper for its consideration.

-- Reiterate our interest in a working group meeting on this issue for September or October.

End objectives.

SUGGESTED TALKING POINTS AND NONPAPER

15. (S/REL UAE)

-- We appreciate the UAE's continued efforts to interdict proliferation-related cargoes.

-- We have discussed with you previously various options for the UAE to resolve the issues it has been having with the disposition of seized cargoes.

-- In this regard, we presented you a paper prior to the

STATE 00091868 002 OF 004

Counterproliferation Task Force meeting last March outlining options for ways the U.S. could help, including for example, technical assistance with physical disposal of interdicted cargoes.

-- Consideration of any disposition options would, of course, depend on whether they are consistent with Emirati law, as well as any applicable international law.

-- We suggested in the recent June Counterproliferation Task Force experts meeting that you consider adopting additional legal authorities, possibly in the context of the export control implementing regulations you are presently drafting, that would provide you with greater domestic legal authority to address the disposition of interdicted cargoes.

-- As promised in the June experts meeting, we have provided a nonpaper with examples of U.S. legal authorities that address the disposition of seized goods; you may find these useful as you draft the export control implementing regulations.

-- In June, you said you might be able to meet this fall to discuss this issue further. We would like to explore the possibility of a meeting in September or October.

-- We also note that, under operative paragraph 14 United Nations Security Council Resolution 1874, Member States are required to seize and dispose of items, the supply, sale, transfer, or export of which is prohibited by paragraph 8(a), 8(b) or 8(c) of Security Council Resolution 1718, and that are identified in an inspection pursuant to paragraph 11, 12 or 13 of Resolution 1874.

End suggested talking points.

16. (SBU) Begin Nonpaper

NONPAPER ON U.S. LEGAL AUTHORITIES FOR THE DISPOSITION OF CARGOES

As we continue to work together on counterproliferation issues, it will be important to address legal questions associated with the disposition of seized cargoes. What follows are examples of U.S. legal authorities regarding seizure and disposition of cargoes. We hope these examples will be useful in your efforts to adopt domestic legal

authority in the UAE needed to permit the UAE to dispose of legally seized proliferation-related items.

--Seizure and Forfeiture of Cargo--

a. The following is a general description of U.S. legal authorities to seize and forfeit inbound merchandise:

U.S. customs officers have broad authority to seize merchandise for forfeiture if they have probable cause to believe that merchandise has been brought in, imported, or introduced into the U.S. contrary to law. (In this context, probable cause refers to the collection of facts and circumstances that is sufficient to lead a reasonable person to believe that a particular person committed a crime or that particular property is subject to seizure for a violation of law.) Once the merchandise is seized, those persons with an interest in the property, including owners and lienholders, receive notice of the seizure and the government's intent to initiate forfeiture proceedings and are provided an opportunity to petition the government to release the goods, unless the goods are prohibited merchandise such as illegal drugs.

b. The following is an excerpt of the U.S. law that governs the seizure and forfeiture of inbound merchandise:

&Merchandise introduced into the United States in violation of this section((making it a violation to smuggle, pass a false document through the customhouse, or import merchandise contrary to law)(, shall be forfeited to the United States.8 (Citation- 18 U.S.C. 545)

c. The following is an excerpt of U.S. law that governs the seizure and forfeiture of outbound merchandise:

&Whenever an attempt is made to export or ship from or take out of the United States any arms or munitions of war or other articles in violation of law, or whenever it is known or there shall be probable cause to believe that any arms or munitions of war or other articles are intended to be or are being or have been exported or removed from the United States in violation of law, the Secretary of (Homeland Security)(may seize and detain such arms or munitions of war or other articles and may seize and detain any vessel,

STATE 00091868 003 OF 004

vehicle, or aircraft containing the same or which has been or is being used in exporting or attempting to export such arms or munitions of war or other articles.8 (Citation- 22 U.S.C. 401)

--Items in transit--

The legal authorities to search, detain, and seize inbound items also apply to search, detention and seizure of items in transit. No distinction is made between inbound items and items in transit for purposes of these authorities.

--Disposition of Forfeited Cargo--

a. The following is a general description of U.S. legal authorities to dispose of forfeited cargoes:

Most contraband, such as illegal drugs or counterfeit trademarked articles, may be destroyed under a customs officer's supervision. With respect to other goods that have been forfeited, customs officers may: sell them at auction (unless such sale is not feasible because the transport of the article requires a license for import/export); destroy them; retain them for official use; transfer them to other government agencies; and in some limited cases donate them to charitable organizations. Where the goods are sold at auction, the proceeds of sale are deposited in a government fund and are made available to offset law enforcement expenses, including costs of seizure

and storage, investigation, informant awards, and reimbursement of private citizens.

b. The following is an excerpt of a U.S. law that governs the disposition of inbound forfeited cargoes:

&Importation, removal, etc. contrary to laws of United States. Except as specified(, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unloading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.⁸ (Citation- 19 U.S.C. 1595a(a))

&Penalty for aiding unlawful importation. Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.⁸ (Citation- 19 U.S.C. 1595a(b))

c. The following is an excerpt of a U.S. law that governs the disposition of outbound forfeited cargoes:

&Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.⁸ (Citation- 19 U.S.C. 1595a(d))

d. The following is an excerpt of a U.S. law that governs the funds generated from the sale of seized and forfeited cargoes:

&In general, there is established in the Treasury of the United States a fund to be known as the &Department of the Treasury Forfeiture Fund⁸ (referred to in this section as the &Fund⁸). The Fund shall be available to the Secretary (of the Treasury), without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law(enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

Payment of all proper expenses of seizure (including investigative costs incurred by a Department of the Treasury law enforcement organization leading to seizure) or the proceedings of forfeiture and sale, including the expenses of detention, inventory, security, maintenance, advertisement, or disposal of the property⁸ (Citation- 31 U.S.C.9703(a)¹)

End nonpaper.

REPORTING DEADLINE

STATE 00091868 004 OF 004

¶7. (U) Please report response within ten working days of receipt of this cable.

POINT OF CONTACT

¶8. (U) Department point of contact for follow-up is Chris Herrington ISN/CPI 647-5035.

CLINTON